THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.22874 of 1996

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the proceedings dated 8.10.1996 as arbitrary, illegal and in violation of principles of natural justice and consequently direct the respondents to pay family pension and difference amount to the petitioner in accordance with Board's Memo No.DM(IR)PO.II/1/887/91-5 dated 9.10.1992 basing on the last pay drawn i.e. Rs.2,838-50 ps. and dearness allowance on difference amount.

Under the impugned proceedings, petitioner was asked to refund an amount of Rs.14,618/- by way of demand draft drawn in favour of Divisional Engineer, Operation, Ananthapur payable at State Bank of India, Ananthapur on or before 25.10.1996, failing which, the amount will be recovered from the pension being paid to the petitioner. According to the respondents, an amount of Rs.14,618/- was paid in excess towards dearness relief while making payment of arrears of pension for the period from 5.1.1991 to 31.5.1994 in terms of the Board's Memo dated 9.11.1992.

It appears, husband of the petitioner while working as Lineman died in January 1991 and she was paid all the retirement benefits and also arrears of family pension. Now this impugned order is issued seeking to recover the said amount on the ground that she was paid excess amount.

It is the contention of the learned counsel for petitioner that before issuing impugned order, no notice of any kind has been issued to the petitioner and the respondents have not explained as to the payment of excess amount.

This Court, while admitting the writ petition on 31.10.1996, granted interim suspension of the impugned order. Now it is more than 11 years since the writ petition is pending.

The respondents filed a detailed counter denying the averments made by the petitioner stating that;

> "In view of the Board Orders, the spouse of the deceased is entitled to family pension of Rs.1,063/- plus dearness allowance as on 2/91 and Rs.132/- (Rs.1,195/-) difference of last pay drawn Rs.1,062/- total amount payable Rs.2,257/-. The difference between pay and pension is only a quantum of difference admissible rules. The dearness allowance is only admissible on basic pay in respect of persons working and on the pension on retired employees. So, there is no bearing on "difference" for payment of dearness allowance since the Board specially mentioned in the said memo it is a "relief" to illiterate dependant of the deceased employee. Therefore, the difference is to be treated as a relief, but a part of pension allowing dearness allowance.
>
> Adverting to para 5 of the affidavit, it is submitted that the last pay drawn stated in the writ petition by the petitioner as Rs.2,838.50 is not correct and the family pension furnished is also not correct. The deceased employee while in service was drawing Rs.2,125/- at the time of his death. As per Rule No.50(3)(i) of A.P. Revised Pension Rules is entitled to 50% of last drawn pay for 7 years or till attaining the age of superannuation whichever is earlier and 30% thereafter. Accordingly, the pension was fixed at Rs.1,063/- i.e. 50% of pay last drawn. Therefore, the contention of the petitioner is against the A.P. Revised Pension Rules".

Since no notice of any kind has been issued asking the petitioner to explain as to why such amounts shall not be recovered from her pension, the impugned order suffers from gross violation of principles of natural justice. Therefore, the impugned order is set aside

In the result, the writ petition is allowed. No order as to costs.

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C.V.RAMULU,

J

Date: 16.3.2007

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W.P.No.22874 of 1996

16.3.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.22874 of 1996

Date: 16th March, 2007

Between:

Smt.Nallamma

.. Petitioner

And

The Chairman,
A.P. State Electricity Board,
Vidyut Soudha, Hyderabad & others.

.. Respondents